

THE CHARTER BOARD OF THE CITY OF READING

IN RE: Purchasing Requirements of : Request Received: November 8, 2006
Boards, Authorities and :
Commissions : Advisory Opinion No. 4

ADVISORY OPINION

I. PROCEDURAL HISTORY AND QUESTION PRESENTED

By letter dated November 1, 2006¹ Christopher G. Kanezo, Deputy City Clerk of the City of Reading, (“Deputy Clerk”) requested that the City of Reading Charter Board (“Board”) issue an advisory opinion (“Request for Advisory Opinion”) with respect to the following issue: “Are boards, authorities and commissions subject to the same purchasing requirements as the City of Reading?”

II. DISCUSSION

A. Pertinent Provisions of the Charter and Administrative Code

Section 915 of the Charter governs the bidding process for the City of Reading (“City”) and all of the departments and organizational subdivisions of the City. Section 915 concerns itself only with purchases where the estimated cost of “construction, erection, installation, completion, alteration, repair of, or addition to, any project subject to the control of the City” exceeds \$10,000 and where the estimated cost of the “purchase of supplies, materials or equipment or the rental of any equipment” exceeds \$10,000. *See* Charter at § 915(a), (b).

The Administrative Code provides substantially more detail than the Charter and provides as Exhibit “A” to subdivision “H” of the Administrative Code a document entitled *Purchasing Policy and Procedures* (“*Purchasing Policy*”). Each subpart of the *Purchasing Policy* provides to whom the regulations are applicable. *See, for example*, Subpart “Purchasing

¹ The Charter Board Ordinance, Section VI, requires that advisory opinions be issued within thirty days of the Board receiving the request. The Charter Board received the request for advisory opinion on November 8, 2006.

Policy” applicable to all departments and divisions; Subpart “Emergency Purchase Procedure” applicable to all departments; Subpart “Bid Solicitation, Evaluation and Award Procedure” applicable to the Purchasing Office of the City of Reading and all departments and divisions; *and* Subpart “Purchasing of Professional Services” applicable to all department directors. *See* Administrative Code at pp. 1-116, 1-125, 1-138, 1-148.

B. Creation and Existence of Boards, Authorities and Commissions

Municipal authorities created under the Municipality Authorities Act, 53 Pa. C.S. § 5601, *et seq.*, or by similar or prior acts, are considered agencies of the Commonwealth and are not considered an instrumentality of local municipalities. *See Commonwealth v. Erie Metro. Transit Auth.*, 444 Pa. 345, 348, 281 A.2d 882, 884 (1971) (affirming that authorities created under the Municipality Authorities Act are agencies of the Commonwealth for purposes of statutory sales and use tax exemptions); *Whitemarsh Township Auth. v. Elwert*, 413 Pa. 329, 332, 196 A.2d 843, 845 (1964) (indicating that such authorities are state instrumentalities for purposes of assessing the construction cost of a sewer system); *PennDOT v. Wilksburg Penn Joint Water Auth.*, 740 A.2d 322, 324 (Pa.Cmwlt.1999) (finding a water system formed pursuant to the Municipality Authorities Act to be a state instrumentality); *London Grove Township v. Southeastern Chester County Refuse Auth.*, 102 Pa.Cmwlt. 9, 14, 517 A.2d 1002, 1004 (Pa.Cmwlt.1986) (finding a refuse authority organized under the Municipality Authorities Act exempt from the township's zoning laws as a Commonwealth instrumentality); 53 Pa. C.S. § 5505 (relating to parking authorities). The Charter and the Administrative Code are not applicable to municipal authorities created pursuant to statewide legislation. The Municipality Authorities Act provides its own regulation for awarding contracts. 53 Pa. C.S. § 5614 (regarding competition in award of contracts).

Subordinate departments, boards or commissions of municipal corporations, such as the City, are agents of the municipality, invested with certain subordinate functions for reasons of convenience and public policy. They are created, governed, and the extent of their powers determined, by the municipality, in the City's case, by the Charter, and any applicable state law of statewide application. *See Fraternal Order of Police Lodge No. 5 v. City of Philadelphia*, 92 Pa. Commw. 340, 347 n.10, 500 A.2d 900, 904 n.10 (1985) (stating that scope of inquiry of Special Investigation Commission created by Mayor of City of Philadelphia is limited by the Charter of the City of Philadelphia).

C. Application of Purchasing Requirements of Charter and Administrative Code

The Charter and the Administrative Code are not applicable to municipal authorities created pursuant to statewide legislation. The Municipality Authorities Act provides its own regulation for awarding contracts. 53 Pa. C.S. § 5614 (regarding competition in award of contracts). However, the Charter's and Administrative Code's purchasing requirements do apply to all subordinate departments, boards and commissions of the City.

The Deputy Clerk does raise one sub-issue which should be addressed. The Request for Advisory Opinion states:

“Several of the cities [sic] boards, authorities and commissions contract with counsel for legal assistance in the course of their normal operations. While I do not dispute any organizations [sic] right to retain professional services in fulfillment of their obligation to the citizens of Reading, I do question the absence of process.”

The Administrative Code clearly regulates the purchasing of professional services, including legal services. Administrative Code at p. 1-148. These requirements also apply to all subordinate departments, boards and commissions of the City and are just as applicable as any other provision of the Charter or Administrative Code.

The Deputy Clerk does not provide a specific example of a purchasing process of a board, authority or commission of the City to be tested by the Charter and Administrative Code. The Board encourages the Deputy Clerk to utilize the advisory opinion process for that purpose.

IV. OPINION OF THE BOARD

The Opinion of the Board is as follows:

A. The purchasing requirements of the Charter and the Administrative Code, including those concerning the purchasing of professional services, do apply to all subordinate departments, boards and commissions of the City.

B. The Charter and the Administrative Code are not applicable to municipal authorities created pursuant to statewide legislation. As agencies of the Commonwealth, such authorities may not be regulated by local municipal laws, such as the Charter and Administrative Code. In addition, state law governs the awarding of contracts by municipal authorities.

CITY OF READING CHARTER BOARD

Date: 12/4/2006

By: Susan J. Gibson
Susan Gibson, Chair